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February 11, 2020

## VIA CERTIFIED MAIL / RETURN RECEIPT REQUESTED

Gary J. Weisenberg, CEO  
S&W Atlas Iron & Metal Co., Inc.  
10019 S. Alameda Street  
Los Angeles, California 90002

### **RE: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT**

Dear Mr. Weisenberg:

#### **I. INTRODUCTION**

I am writing on behalf of the Los Angeles Unified School District ("LAUSD") California regarding violations of the Clean Water Act<sup>1</sup> ("CWA" or "Act") and California's Industrial General Storm Water Permit<sup>2</sup> ("Storm Water Permit" or "Permit") occurring at the facility located at 10019 S. Alameda Street in the City of Los Angeles, California (the "Facility"). In California, any person who discharges storm water associated with certain classified industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1).

As detailed herein, Gary Weisenberg, individually and as Trustee of the Dorothy Sebulsky Trust, and as Co-Trustee of the Residual Trust created under the Will of Jacob L. Sebulsky, Sophie Weisenberg a/k/a Sophia Weisenberg, as Co-Trustee of the Residual Trust created under the Will of Jacob L. Sebulsky, Doris Sebulsky as an individual, and 10019 S. Alameda LLC (collectively, the "Facility Owners") are the owners and S&W Atlas Iron & Metal Co., Inc. ("Atlas") is the operator of the Facility. (The Facility Owners and Atlas are collectively referred to herein as the "Atlas Parties.") As explained in this letter, the Atlas Parties have

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<sup>1</sup> Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

<sup>2</sup> National Pollution Discharge Elimination System ("NPDES") General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, NPDES NO. CAS000001 (INDUSTRIAL GENERAL PERMIT) - Atlas Iron Metal, 10019 South Alameda Street, Los Angeles, California (WDID 4 191007206).

consistently failed, and continue to fail, to comply with the Permit's procedural and substantive provisions.

LAUSD is a school district and a political subdivision of the State of California. One of the many schools operated by LAUSD is David Starr Jordan High School, which is located at 2265 East 103<sup>rd</sup> Street, Los Angeles, California (the "School Site"). The School Site is immediately adjacent to the Facility, and contamination has migrated, and continues to migrate, onto the School Site from the Facility. LAUSD operates the School Site and other schools in Los Angeles City and County, and its teachers and students use and enjoy the Los Angeles River, the Los Angeles River Estuary, the Los Angeles/Long Beach Harbor, San Pedro Bay, and the Pacific Ocean ("Receiving Waters"). The unlawful discharge of pollutants from the Facility into the Receiving Waters impairs the School Site's population and LAUSD's teachers' and students' use and enjoyment of these waters. Thus, the interests of LAUSD's teachers and students have been, are being, and will continue to be adversely affected by the Atlas Parties' failure to comply with the Clean Water Act and the Storm Water Permit.

The purpose of this communication ("Notice Letter") is to provide the Facility Owners and Atlas, its officers, managers and executive staff, with notice of violations of the Storm Water Permit occurring at the Facility, including, but not limited to, discharges of polluted storm water and non-storm water into local surface waters and on to school property. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, the Atlas Parties are liable for daily violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action in federal court under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. The Clean Water Act requires that notice be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur ("State Board"), and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

This Notice Letter is being sent to you as the responsible owners and/or operators of the Facility, or as the registered agent for this entity, and is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Act to inform the Atlas Parties that LAUSD intends to file a federal enforcement action against it for violations of the Permit and Act at the expiration of 60 days. Between now and March 2020, LAUSD is willing to discuss effective remedies, and thus, encourages the Atlas Parties to engage in meaningful, productive negotiations *as soon as possible* to avoid unnecessary expenditures and preserve scarce judicial resources.

## II. BACKGROUND

### A. The Owner and Operator of the Facility

Information available to LAUSD indicates that the Facility Owners are or have been owners of the Facility, and Atlas has been the operator of the Facility, for decades. Atlas is an active California corporation, which first registered with California's Secretary of State in 1963. According to the corporate Statement of Information filed by Atlas on August 12, 2019 ("2019 SOI"), Gary J. Weisenberg is the Chief Executive Officer and Chief Financial Officer of Atlas, and Matthew Weisenberg is the Secretary of Atlas. The 2019 SOI lists Gary and Matthew

Weisenberg as Atlas's officers and directors, and Gary Weisenberg is listed as the current registered agent at 10019 S. Alameda Street in the City of Los Angeles, California 90002.

**B. The Facility's Storm Water Permit Coverage**

Certain facilities in California that discharge storm water associated with classified industrial activities to waters of the United States ("WOTUS") are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Board (the "Water Board"). Information available to LAUSD indicates that Atlas is regulated under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, NPDES No. CAS000001 (the "General Permit").

Atlas's industrial operation at the Facility consists of buying and re-selling scrap materials and metals; (SIC) Code 5093-Scrap and Waste Materials. On June 9, 1992, Atlas signed a Notice of Intent ("NOI") to be enrolled under the Industrial General Permit. In signing the NOI, Atlas certified to the State of California that it read the Industrial General Permit and would comply with all its requirements. The State Water Resources Control Board processed the signed NOI for the Facility on June 9, 1992. As specified in the Industrial General Permit, Atlas was required to develop a Storm Water Pollution Prevention Plan (SWPPP), which required it to identify potential sources of pollution and describe specific best management practices (BMPs) that shall be implemented to eliminate or reduce storm water pollution from the facility. Also, the Industrial General Permit required Atlas to develop a Monitoring Program and Reporting Requirements (MRP) to evaluate the effectiveness of the SWPPP in reducing or eliminating pollutants in the storm water discharge.

**C. Storm Water Pollution**

With every significant rainfall event millions of gallons of polluted storm water originating from industrial facilities, such as Atlas's metal salvage yard and recycling facility, discharge into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. The discharges of pollutants from industrial facilities contribute to the impairment of downstream waters ability to serve environmental, social and economic functions. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Although pollution and habitat destruction have drastically diminished once abundant and varied fisheries, Southern California's surface waters are still essential habitat for dozens of fish and bird species, as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that surface waters have for visitors and people in local communities alike. The public's use of local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to local waterways.

Polluted discharges from recycling facilities such as this Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, and mercury; chemical oxygen demand ("COD"); biological oxygen

demand ("BOD"); total suspended solids ("TSS");<sup>3</sup> nitrite plus nitrate ("N+N"); benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; total kjehldahl nitrogen ("TKN"); trash; and oil and grease ("O&G"). Many of these pollutants are on the Proposition 65 list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Health & Safety Code §§ 25249.5 - 25249.1. Discharges of polluted storm water pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

### III. THE FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS

#### A. The Facility Site Description and Industrial Activities

The Facility is bordered to the North, South, East and West by the School Site, the Jordan Downs multifamily residential housing development, the former steel mill foundry site and a site owned by the Housing Authority of the City of Los Angeles, as well as commercial/industrial businesses and buildings, and residential dwellings.

Information available to LAUSD indicates that the Facility has been used as a metal salvage yard and recycling facility that has operated from the 1940s to the present. Metal scrap recycling operations involve large and potentially hazardous equipment, the use of flammable and explosive gases, and the generation of metal fumes, dusts, and toxic vapors. During the time Atlas has operated on the Facility, it has kept piles of dirt, debris, and other materials that contained hazardous levels of PCBs and other hazardous materials, substances and/or wastes on-site. In addition, there have been, and continue to be, releases and discharges from the Facility, including sudden and accidental releases and discharges of hazardous materials, substances and/or wastes that migrated by various means from the Facility onto the School Site. This includes contaminated water runoff and particulate debris landing on streets, structures, roofs and paved surfaces as a result of air emissions.

Information available to LAUSD indicates that over the years, there have been *multiple incidents* at the Facility that could have resulted in an environmental and human disaster. In or about May 2002, an explosion from cutting an oil drum propelled pieces of metal onto the School's athletic fields. In December 2002, a second explosion occurred from a live round of military tank ordinance that was inadvertently brought to the Facility with other military wastes for recycling purposes. The shell exploded while being dismantled and shrapnel from the round was propelled over the shared fence onto the School Site.

In response to these incidents, the Department of Toxic Substances Control ("DTSC") investigated potential contaminant migration from the Facility on to the School Site. Based on the investigation, DTSC issued an "Imminent and Substantial Endangerment Determination" in

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<sup>3</sup> High concentrations of TSS degrade optical water quality by reducing water clarity *and* decreasing light available to support photosynthesis. TSS has been shown to alter predator prey relationships (for example, turbid water may make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons, are absorbed onto TSS. Thus, higher concentrations of TSS results in higher concentrations of toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.

or about May 2004, requiring the removal of arsenic and lead impacted soil at the School Site's baseball field located adjacent to the Facility.

**B. Facility Pollutants and BMPs**

Information available to LAUSD indicates that pollutants associated with operations at the Facility include, but are not limited to arsenic, lead, chromium, copper, polycyclic aromatic hydrocarbon, antimony, cadmium, and polychlorinated biphenyls, trash and debris.

Information available to LAUSD indicates that metal parts (as received), finished products, and industrial waste products are stored outdoors, exposed to precipitation and wind, without adequate cover or containment, which results in pollutants being washed, blown and/or tracked throughout the Facility. As a result, trucks and vehicles leaving the Facility via the driveways are pollutant sources tracking sediment, dirt, oil and gas, metal particles, and other pollutants off site. Additionally, metal parts and hazardous materials associated with operations at the Facility occur without containment or other measures to prevent polluted storm water and prohibited non-storm water from discharging from the Facility.

Information available to LAUSD indicates Atlas has not properly developed and/or implemented the necessary best management practices ("BMPs") to address pollutant sources, pollutants, and resulting contaminated discharges. The Permit and Act require that Atlas use a combination (or suite) of both basic (minimum) and advanced BMPs at the Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water. Due to the lack of BMPs, the inadequacy of the BMPs and/or failures to effectively implement BMPs at the Facility, industrial activities and pollutants are exposed to precipitation during rain events, and this polluted storm water discharges into the storm drain system, which discharges into the Receiving Waters.

Atlas's failure to develop and/or implement required BMPs results in discharges of storm water and non-storm water in violation of the Storm Water Permit and the Clean Water Act. These illegal discharges of polluted storm and non-storm water negatively impact LAUSD's population's use and enjoyment of the Receiving Waters by degrading the quality of the Receiving Waters and by posing risks to human health and aquatic life.

**C. Facility Storm Water Flows and Discharge Locations**

Information available to LAUSD indicates that storm water at the Facility discharges into the Receiving Waters. The Regional Board issued the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura County* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of the Los Angeles River that receives polluted storm water discharges from the Facility. These Beneficial Uses include, but are limited to: warm freshwater habitat ("WARM") and ground water recharge ("GWR") as existing Beneficial Uses, and wildlife habitat ("WILD"), municipal and domestic supply ("MUN") and industrial service supply ("IND") as potential Beneficial Uses.

A water body is impaired pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), when its Beneficial Uses are not being achieved due to the presence of one or more pollutants. Polluted discharges from the Facility cause or contribute to the degradation of surface water and aquatic dependent wildlife. For the aquatic ecosystem to regain its health, contaminated storm water discharges, including those from the Facility, must be eliminated.

#### IV. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT

In California, any person who discharges storm water associated with certain classified industrial activity must comply with the terms of the current NPDES storm water permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). On June 9, 1992, Atlas signed a Notice of Intent (“NOI”) to be enrolled under the Industrial General Permit, and Atlas is currently enrolled under the General Permit. The original SWPPP was prepared in June 2015 and revised in August 2019.

LAUSD has learned that on July 3, 2019, Regional Board staff (“Staff”) was granted access and authorization by Atlas to inspect the Facility. The purpose of the inspection was to determine compliance with the Industrial General Permit. During the inspection, Staff met with Atlas, requested a copy of the SWPPP for review, reviewed the MRP, and walked through the Facility with Atlas representatives. Staff also discussed the preliminary inspection findings with Atlas during the inspection.

Based on Staff’s observations onsite and review of the SWPPP and the MRP, the following significant violations of the Industrial General Permit were noted:

- Miscellaneous debris and sediment were observed in between roll-off storage bins in the Plastic and Steel storage areas of the Facility (Photographs 1-4). This is a violation of Industrial General Permit Section X.H.
- Tote tanks, empty plastic drums, metal drums containing hazardous wastes, and other used containers were stored indoors and outdoors without secondary containments; outdoor storage did not have overhead covers (Photographs 5-10). This is a violation of Industrial General Permit Section X.H.
- Rusted metal equipment, vehicle batteries, and rusted scrap materials were stored outdoors without overhead cover or secondary containment in the Maintenance Area of the Facility. This area also had poor housekeeping practices (Photographs 11 -16). This is a violation of Industrial General Permit Section X.H.

To come into compliance with the Industrial General Permit, the Water Board required Atlas to immediately implement the following actions:

1. Immediately clean and remove debris, sediment, or industrial materials that can be readily dispersed by wind and mobilized by contact with storm water.
2. Immediately provide secondary containment to all containers with liquids, wastes, industrial materials and residues that are stored indoors and outdoors. Immediately move / store those outdoor containers indoors, along with secondary containments.
3. Immediately provide cover, or remove from outdoor areas, or store indoors all rusted equipment, vehicle batteries, and other materials, that can mobilize pollutants when in contact with storm water.

By October 17, 2019, Atlas was required to submit a written response to the Water Board, with photographic evidence, identifying the measures taken to comply with the above items. Based on the information available to LAUSD, *Atlas has not complied with the above items* and has not submitted a timely and complete response to the Water Board.

In addition to the Atlas Parties' violations of the Industrial General Permit, on May 8, 2019, the Los Angeles County Department of Public Health (the "Department") conducted a review of environmental and health data relating to the Atlas Site and visited the School Site. Following this investigation, the Department issued a letter regarding the various health and safety concerns to the school community caused by the Atlas Site. Specifically, the concerns consisted of the following issues:

1. Standing water at the Atlas Site and runoff of contaminated stormwater.
2. Site operations occurring within the 50-foot buffer zone.
3. Physical hazards, chemical exposures and worker/resident safety.

Atlas is liable for violations of the General Permit and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) ("[l]imitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect"); *see also CSPA v. River City Waste Recyclers*, 2016 U.S. Dist. LEXIS 120186, at \*13-18 (E.D.Cal. Sep. 2, 2016).

#### **V. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT**

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$52,414.00 per day per violation for violations that occurred after November 2, 2015.

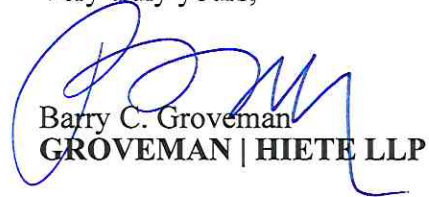
In addition to civil penalties, LAUSD will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), LAUSD will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.



**VI. CONCLUSION**

LAUSD is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, LAUSD will file a citizen suit under Section 505(a) of the Clean Water Act for Atlas's violations of the General Permit unless alternative arrangements have been agreed to in writing.

Very truly yours,



Barry C. Groveman  
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BCG:\

cc: Jay Golida, Esq. (by e-mail)  
William W. Funderburk, Esq. (by e-mail)